

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

NAOMI GONZALES,

Plaintiff,

v.

AGWAY ENERGY SERVICES, LLC,

Defendant.

No. 5:18-cv-235 (MAD/ATB)

**DECLARATION OF D. GREG BLANKINSHIP IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

I, D. Greg Blankinship, declare pursuant to 28 U.S.C. § 1746 under penalty of perjury that the following are true and correct:

1. I am a partner in the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and counsel for Plaintiff in the above-captioned action. I respectfully submit this Declaration in Support of Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss.

2. Attached as Exhibit 1 is a true and correct copy of the ruling on defendant's motion to dismiss and the transcript of the motion to dismiss hearing in *Rolland v. Spark Energy, LLC*, 17-02680, ECF No. 28 (D.N.J. Dec. 7, 2017)

3. Attached as Exhibit 2 is a true and correct copy of the ruling on defendant's motion to dismiss in *Tully v. N. Am. Power & Gas, LLC*, No. 14-634, ECF No. 68 (D. Conn. Oct. 29, 2015).

4. Attached as Exhibit 3 is a true and correct copy of the ruling on defendant's motion to dismiss in *Fritz v. North American Power & Gas, LLC*, No. 14-634 (D. Conn. Jan. 29, 2015), ECF No. 42.

5. Attached as Exhibit 4 is a true and correct copy of the transcript of the motion to dismiss hearing in *Wise v. Energy Plus Holdings, LLC*, No. 11-7345 (S.D.N.Y. March 23, 2012).

6. Attached as Exhibit 5 is a true and correct copy of the transcript of the motion to dismiss hearing in *Gruber v. Starion Energy, Inc.*, No. 14-01828, ECF No. 46-1 (D. Conn. Apr. 7, 2015).

7. Attached as Exhibit 6 is a true and correct copy of the ruling on defendant's motion to dismiss in *Sobiech v. U.S. Gas & Electric, Inc.*, No. 14-04464, ECF No. 24 (E.D. Pa. Feb. 4, 2015).

8. Attached as Exhibit 7 is a true and correct copy of the transcript of the motion to dismiss hearing in *Sanborn v. Viridian Energy, Inc.*, No. 14-1731, ECF No. 26-1 (D. Conn. Apr. 1, 2015).

9. Attached as Exhibit 8 is a true and correct copy of the transcript of the motion to dismiss hearing in *Steketee v. Viridian Energy, Inc.*, No. 15-585, ECF No. 46 (D. Conn. Apr. 14, 2016).

10. Attached as Exhibit 9 is a true and correct copy of the ruling of the Court in *Komoda v. Palmco Energy*, No. 3263-14 (N.J. Super. Ct. Civ. Div. Sept. 19, 2014).

11. Attached as Exhibit 10 is a true and correct copy of the ruling on defendant's motion to dismiss in *Aks v. IDT Energy*, No. 4936-14 (N.J. Super. Ct. Civ. Div. Nov. 6, 2014).

12. Attached as Exhibit 11 is a true and correct copy of the ruling on defendant's motion to dismiss in *Buermeyer v. Suburban Propone, L.P.*, No. 5367 (N.Y. Sup. Ct. Jan. 3, 2011).

13. Attached as Exhibit 12 is a true and correct copy of the New York Public Services Commission's October 20, 2017 Order Denying Agway Energy Services, LLC's Petition for Waiver of the Prohibition on Service to Low-Income Customers by Energy Service Companies in Case No. 12-M-0476.

I declare under penalty of perjury that the foregoing are true and correct.

Executed on March 19, 2018 in White Plains, New York.

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**

By: s/ D. Greg Blankinship
D. Greg Blankinship